

ESTTA Tracking number: **ESTTA707832**Filing date: **11/10/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056067
Party	Plaintiff Ava Ruha Corporation dba Mother's Market & Kitchen
Correspondence Address	STEPHEN Z VEGH STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656 UNITED STATES opposition@stetinalaw.com
Submission	Motion to Extend
Filer's Name	Stephen Z. Vegh
Filer's e-mail	opposition@stetinalaw.com
Signature	/Stephen Z. Vegh/
Date	11/10/2015
Attachments	Motion.Extend.pdf(32814 bytes ) Decl.SZV.Motion.Extend.pdf(44363 bytes ) Decl.SZV.Motion.Extend.Exhibit.A.pdf(1130678 bytes ) Decl.SZV.Motion.Extend.Exhibit.B.pdf(2823532 bytes ) Decl.SZV.Motion.Extend.Exhibit.C.pdf(343031 bytes ) Decl.SZV.Motion.Extend.Exhibit.D.pdf(90565 bytes ) Decl.SZV.Motion.Extend.Exhibit.E.pdf(95759 bytes ) Decl.SZV.Motion.Extend.Exhibit.F.pdf(60312 bytes ) Decl.SZV.Motion.Extend.Exhibit.G.pdf(61978 bytes ) Decl.SZV.Motion.Extend.Exhibit.H.pdf(78456 bytes ) Decl.SZV.Motion.Extend.Exhibit.I.pdf(81169 bytes ) Decl.SZV.Motion.Extend.Exhibit.J.pdf(58862 bytes ) Decl.SZV.Motion.Extend.Exhibit.K.pdf(58952 bytes ) Decl.SZV.Motion.Extend.Exhibit.L.pdf(39011 bytes ) Decl.SZV.Motion.Extend.Exhibit.M.pdf(44796 bytes ) Decl.SZV.Motion.Extend.Exhibit.N.pdf(102795 bytes ) Decl.SZV.Motion.Extend.Exhibit.O.pdf(54338 bytes ) Decl.SZV.Motion.Extend.Exhibit.P.pdf(91796 bytes ) Decl.SZV.Motion.Extend.Exhibit.Q.pdf(105339 bytes ) Decl.SZV.Motion.Extend.Exhibit.R.pdf(92420 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corporation dba Mother's Market & Kitchen,	) Cancellation Nos.:
	)
	) 92056067 for Registration No. 3675027
Petitioner,	) For the Mark MOTHER'S (stylized)
	)
vs.	) And
	)
Mother's Nutritional Center, Inc.,	) 92056080 for Registration No. 3675056
	) For the Mark MOTHER'S NUTRITIONAL
Respondent.	CENTER

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**PETITIONER'S MOTION TO EXTEND REMAINING DEADLINES IN THE  
CASE, INCLUDING DISCOVERY CUT-OFF**

Petitioner Ava Ruha Corporation dba Mother's Market & Kitchen ("Petitioner") hereby moves pursuant to TBMP Rule 509.01(a) and Fed. R. Civ. Proc. 6(b) to extend the time for the remaining deadlines in this case (other than expert disclosures) by 60 days, including discovery cut-off. Petitioner submits that good cause exists to extend these dates.

On March 9, 2015, Petitioner timely served a notice of deposition of Respondent under Federal Rule of Civil Procedure 30(b)(6). These dates were continued after the parties began settlement negotiations in April of this year which included the exchange of several versions of settlement terms. These negotiations have been ongoing to the present. See Vegh Dec.

Respondent recently substituted its former counsel out of the case and replaced it

with its general counsel on July 31. On September 1, Petitioner's counsel then requested Respondent's new counsel to provide dates of availability for the depositions of his client's representatives. Respondent's counsel responded by identifying dates he could be available for deposition and would "run it past the witnesses" but stated that he would beginning a trial on September 28. Other than two dates in September, Petitioner's counsel indicated would be available for deposition on the rest of the dates indicated. On September 11, Respondent's counsel requested a call to discuss the case. On September 14, the parties' counsel conducted a call wherein settlement issues were discussed. Petitioner's counsel understood from this discussion that if the parties could not reach a resolution of the issues, Respondent's counsel would produce his client's representatives for deposition. On September 14, Respondent's counsel then provided a further settlement proposal. On October 1, Petitioner's counsel requested a further extension of the remaining deadlines in the case, including discovery cut-off, with the understanding that the expert disclosure date was not being extended. Respondent's counsel agreed to this extension. On November 5 and 6, counsel for Petitioner reached out to Respondent's counsel, indicating that additional time was needed to consider Respondent's latest settlement proposal because additional individuals needed to give it consideration on behalf of Petitioner. See Vegh Dec.

After leaving further voicemails and emails with Respondent's counsel, on November 10, Petitioner's counsel spoke with Respondent's counsel Jeffrey Berkowitz who stated that Respondent would not agree to a further-extension of the remaining deadlines in the case, including discovery cut-off. Petitioner's counsel told Mr. Berkowitz he was surprised by his client's position, in view of the understanding that

counsel had in terms of not requiring the parties' representatives to sit for deposition unless and impasse was reached in settlement discussions. Mr. Berkowitz replied that he would allow Petitioner to prosecute its case by making available Respondent's representatives for deposition. Petitioner's counsel responded he needed counsel's consent for a further extension of the discovery cut-off date to allow these depositions to go forward, in view of the fact that the discovery cut-off date was on November 10. Petitioner's counsel further stated that now that Respondent wished to go forward with depositions before Petitioner had formally responded to its last settlement proposal, Petitioner would notice the depositions in short order such that this would be the last discovery extension request that would be made with the Board. Mr. Berkowitz stated he would discuss it with his co-counsel Mr. Marks and get back to me. See Vegh Dec.

Also on November 10, 2015, Petitioner's counsel received a phone call from Mr. Marks who merely restated that his client was not agreeable to any further extensions. I reiterated the statements I made to Mr. Berkowitz, adding that we obviously wanted to take the deposition of Respondent's representatives in view of the prior deposition notice and inquiries made for deposition dates, but in view of counsel's expectation that Respondent's representatives would not sit for deposition unless and until a negotiation impasse were reached, we had not pressed for additional dates or unilaterally noticed his client's depositions. Petitioner's counsel also informed Mr. Marks that Petitioner's delay in providing a response to Respondent's most recent settlement proposal was due to an ongoing change in control of the ownership of Petitioner which required additional layers of consideration by additional individuals for settlement negotiation and approval. Notwithstanding, Respondent's counsel refused to provide additional extensions for

discovery. See Vegh Dec.

For all of the foregoing reasons, good cause exists to grant Petitioner's request for an extension of the remaining deadlines in the case, including discovery cut-off, based on Petitioner's diligent conduct of discovery in this case, the ongoing settlement negotiations between the parties, the prior cooperation between counsel regarding the extension of remaining deadlines, counsels' understanding and expectation that Respondent would not produce his client representatives for deposition until and unless an impasse had been reached in settlement negotiations, and the unique circumstances regarding the consideration of and authorization for approval of settlement terms presented by an ongoing change in control of the ownership of Petitioner which requires additional layers of consideration by additional individuals working with or on behalf of the Petitioner.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: November 10, 2015

By: Stephen Z. Vegh/  
Kit M. Stetina, Reg. No. 29,445  
Stephen Z. Vegh, Reg. No. 48,550  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246  
Counsel for Petitioner

**PROOF OF SERVICE**

State of California     )  
  ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **November 10, 2015**, the attached **PETITIONER’S MOTION TO EXTEND REMAINING DEADLINES IN THE CASE, INCLUDING DISCOVERY CUT-OFF** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Paul S. Marks  
Neufeld Marks  
315 West Ninth Street, Suite 501  
Los Angeles, CA 90015

JEFFREY BERKOWITZ  
BERKOWITZ COHEN AND RENNETT  
9171 WILSHIRE BOULEVARD, SUITE 400  
BEVERLY HILLS, CA 90015

Executed on **November 10, 2015** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

/Tara Hamilton/  
Tara Hamilton

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corporation dba Mother's Market & Kitchen,	) Cancellation Nos.:
	)
Petitioner,	) 92056067 for Registration No. 3675027
	) For the Mark MOTHER'S (stylized)
	)
vs.	) And
	)
Mother's Nutritional Center, Inc.,	) 92056080 for Registration No. 3675056
	) For the Mark MOTHER'S NUTRITIONAL
Respondent.	CENTER

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**DECLARATION OF STEPHEN Z. VEGH IN SUPPORT OF MOTION TO  
EXTEND REMAINING DEADLINES IN THE CASE, INCLUDING DISCOVERY  
CUT-OFF**

I, Stephen Z. Vegh, declare as follows:

1. I am an attorney duly admitted to practice law before all the Courts in the State of California, including the United States District Court for the Central District of California. I am also admitted to practice before the United States Patent and Trademark Office with Registration No. 48,550. I am one of the attorneys of record for Petitioner Ava Ruha Corporation dba Mother's Market & Kitchen (hereinafter "Ava Ruha") in the above-referenced matter. I have personal knowledge of the facts stated herein and if called upon as a witness, I could and would competently testify to the below facts which are personally known to me.

2. On or about May 23, 2013, Petitioner served its First Set of Interrogatories, Request for Admissions and Requests for Production on the Respondent in this matter. Attached hereto as Exhibit “A” are true and correct copies of Petitioner’s first set of discovery.

3. On or about October 3, 2013, Petitioner served its Second Set of Interrogatories, Request for Admissions and Requests for Production on Respondent. Attached hereto as Exhibit “B” are true and correct copies of Petitioner’s second set of discovery.

4. On or about October 21, 2013, the Board stayed this matter pending its ruling on Respondent’s motion for summary judgment based on laches.

5. On or about January 29, 2015, the Board re-opened this matter and ruled on Respondent’s motion for summary judgment.

6. On or about March 4, 2015, Petitioner served a Rule 30(b)(6) deposition notice on Respondent. Attached hereto as Exhibit “C” is a true and correct copy of Petitioner’s deposition notice.

7. On or about March 9, 2015, Respondent’s counsel served her client’s supplemental responses to interrogatories and indicated she would be investigating the availability of Respondent’s witnesses for deposition and would get back to me shortly. Attached hereto as Exhibit “D” is a true and correct copy of Respondent’s email communication.

8. On March 12, 2015, Respondent’s counsel indicated that Respondent’s witnesses were not available for deposition and would provide alternative dates in the



next few days. Attached hereto as Exhibit “E” is a true and correct copy of a correspondence from Respondent’s counsel dated March 12, 2015.

9. On or about March 31, 2015, Petitioner’s counsel followed-up with Respondent’s counsel regarding her client’s availability for deposition. Attached hereto as Exhibit “F” is a true and correct copy of the communication from Petitioner’s counsel.

10. On that same date, Respondent’s counsel indicated that she would be responding shortly regarding deposition dates. She further stated that Respondent’s general counsel, Jeff Berkowitz, would be getting in contact with Petitioner’s counsel. Attached hereto as Exhibit “G” is a true and correct copy of a communication dated March 31, 2015 from Respondent’s counsel.

11. On or about April 10, 2015, Petitioner made a formal written settlement proposal to Petitioner’s counsel, pursuant to F.R.E. 408.

12. On April 23, 2015, Respondent rejected Petitioner’s settlement proposal and presented terms of its own. Respondent also provided dates of availability of two of its witnesses for deposition towards the middle of May, 2015.

13. On or about May 12, 2015, I sent a revised settlement proposal to Respondent’s counsel, pursuant to F.R.E. 408.

14. On May 20, 2015, after receiving Petitioner’s May 12 settlement proposal, Respondent’s counsel agreed to a further extension for Petitioner to respond to discovery as well as an agreement to extend the remaining deadlines in the case by 30 days. Attached hereto as Exhibit “H” is a true and correct copy of this communication.

15. On or about May 27, 2015, Respondent’s counsel agreed to a further extension for Petitioner to respond to Respondent’s discovery and planned to provide

Respondent's comments to the settlement proposal before then. Attached hereto as Exhibit "I" is a true and correct copy of counsel for Respondent's communication.

16. On or about June 25, 2015, Respondent presented a further settlement proposal to the Petitioner.

17. On or about July 16, 2015, Respondent's original counsel advised that they would be substituting out as counsel of record for the Respondent.

18. On or about July 31, 2015, Respondent's counsel, Jeffrey Berkowitz, indicated that his firm had substituted into the case. Attached hereto as Exhibit "J" is a true and correct copy of his communication.

19. On or about September 1, 2015, I sent a communication to Respondent's new counsel requesting dates of availability for Respondent's witnesses. Attached hereto as Exhibit "K" is a true and correct copy of my e-mail communication.

20. On or about September 2, 2015, Respondent's co-counsel advised of dates he would be available for deposition and said he would run dates by his witnesses.

21. On or about September 9, 2015, Respondent's counsel sent an email requesting to discuss deposition dates as well as "the entire case." Attached hereto as Exhibit "L" is a true and correct copy of counsel for Respondent's communication.

22. On or about September 11, 2015, I advised that I could not do depositions on September 15-18 but was otherwise available in September. Attached hereto as Exhibit "M" is a true and correct copy of my email communication.

23. On or about September 11, 2015, Respondent's counsel sent a further email communication requesting "to discuss the case." Attached hereto as Exhibit "N" is a true and correct copy of counsel for Respondent's email communication.

24. On September 14, 2015 I conducted a call with Mssrs. Berkowitz and Marks wherein settlement issues were discussed. Based on this discussion, I understood that if the parties could not reach a resolution of the issues, Respondent's counsel would produce his client's representatives for deposition.

25. That same day, on September 14, Respondent's counsel sent a further revised settlement proposal pursuant to F.R.E. 408.

26. On or about October 1, 2015, I requested a further extension of 30-days for the remaining deadlines in the case, based on the fact that I had yet to hear back from Petitioner regarding Respondent's proposed settlement terms. Attached hereto as Exhibit "O" is a true and correct copy of my email communication.

27. On or about October 8, 2015, I confirmed that the requested extension of pre-trial deadlines would not include expert disclosures in view of counsels' prior agreement. Attached hereto as Exhibit "P" is a true and correct copy of my email communication.

28. On or about November 5, 2015, Paralegal Tara Hamilton of the offices for Petitioner's counsel advised that counsel was still awaiting to receive an answer from Petitioner regarding Respondent's settlement proposal and requested a further extension of time of remaining deadlines in the case. Attached hereto as Exhibit "Q" is a true and correct copy of this email communication.

29. On or about November 6, 2015, I sent a further correspondence to Respondent's counsel indicating that additional time was needed to consider Respondent's settlement proposal because additional layers of approval by additional

individuals were needed to give consideration to Respondent's settlement terms. Attached hereto as Exhibit "R" is a true and correct copy of this email communication.

30. On November 9, 2015, I left voicemail messages for Respondent's counsel and Ms. Hamilton sent a further follow-up email communication regarding Petitioner's requested extension.

31. On or about November 10, 2015, I spoke with Respondent's counsel Jeffrey Berkowitz who stated that Respondent would not agree to a further-extension of the remaining deadlines in the case, including discovery cut-off. I told Mr. Berkowitz I was surprised by his client's position, in view of our understanding and expectation that not requiring the parties' representatives to sit for deposition unless an impasse was reached in settlement discussions. I further told Mr. Berkowitz that based on this understanding, I did not press Respondent for additional deposition dates after Respondent's last settlement proposal and that Petitioner wanted to take the deposition of Respondent's representatives. Mr. Berkowitz replied that he would allow Petitioner to prosecute its case by making available Respondent's representatives for deposition. I responded that we would need his consent to our requested further extension of the discovery cut-off date to allow these depositions to go forward, in view of the fact that the discovery cut-off date was today. I further stated that now that we knew Respondent had changed its position and wished to go forward with depositions **before** Petitioner had formally responded to the last settlement proposal, Petitioner would notice the depositions in short order such that this would be the last discovery extension request that would be made with the Board. Mr. Berkowitz stated he would discuss my request with his co-counsel Mr. Marks and get back to me.

32. Also on November 10, 2015, I received a phone call from Mr. Marks who merely stated that his client was not agreeable to any further extensions. I reiterated the statements I made to Mr. Berkowitz, adding that we obviously wanted to take the deposition of Respondent's representatives in view of the prior deposition notice and my most recent requests for deposition dates from him, but that in view of counsel's expectation and understanding that Respondent's representatives would not sit for deposition unless and until a negotiation impasse were reached, we had not pressed for additional dates or unilaterally noticed his client's depositions until such time. I also informed Mr. Marks that Petitioner's delay in providing a response to Respondent's most recent settlement proposal was due to an ongoing change in control of the ownership of Petitioner which required additional layers of consideration by additional individuals for settlement negotiation and approval. Notwithstanding, Mr. Marks stated that his client refused to provide additional extensions for discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based upon my personal knowledge, and if called as a witness, I could and would competently testify thereto.

Executed this 10th day of November, 2015 at Aliso Viejo, California.

/s/Stephen Z. Vegh

Stephen Z. Vegh

Declarant

**PROOF OF SERVICE**

State of California     )  
  ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **November 10, 2015**, the attached **DECLARATION OF STEPHEN Z. VEGH IN SUPPORT OF MOTION TO EXTEND REMAINING DEADLINES IN THE CASE, INCLUDING DISCOVERY CUT-OFF** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Paul S. Marks  
Neufeld Marks  
315 West Ninth Street, Suite 501  
Los Angeles, CA 90015

JEFFREY BERKOWITZ  
BERKOWITZ COHEN AND RENNETT  
9171 WILSHIRE BOULEVARD, SUITE 400  
BEVERLY HILLS, CA 90015

Executed on **November 10, 2015** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

/Tara Hamilton/  
Tara Hamilton

# Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corproation dba Mother's  
Market & Kitchen,

Petitioner,

vs.

Mother's Nutritional Center, Inc.,

Respondent.

) Cancellation No.: 92056067  
)  
)  
)  
)  
)  
)  
)  
)  
)

**PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT PURSUANT**

**TO P.T.O. RULE 2.120 AND FED. R. CIV. P. 33**

Petitioner, Ava Ruha Corproation dba Mother's Market & Kitchen (hereinafter referred to as "Petitioner"), hereby propounds the following interrogatories to Respondent, Mother's Nutritional Center, Inc. (hereinafter referred to as "Respondent"), in accordance with Patent and Trademark Office Rule 2.120 and Rule 33 of the Federal Rules of Civil Procedure. Each interrogatory shall be answered separately and fully, through officers or agents thereof competent to testify on Respondent's behalf, in writing under oath, unless objected to, in which event the reason for objection shall be stated in lieu of an answer.

**INSTRUCTIONS AND DEFINITIONS**

- A. These interrogatories shall be deemed to seek answers as of the date hereof, and to the



full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these interrogatories are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and before this proceeding is completed.

B. The following interrogatories shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the interrogatory relates, associated in any way with the Respondent.

C. If the answer to any interrogatory or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular interrogatory, or subdivision thereof, is not possible, the interrogatory should be answered to the extent possible, together with the reason stated why only a partial answer is given.

D. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified by providing the following information, see *Upjohn v. United States*, 449 U.S. 383 (1981):

1. The identity and position of the person or persons supplying the information;
2. The place, date and manner of recording, or otherwise providing the instrument;
3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;
4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;

6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;
8. All facts showing that the claimed privilege has not been waived;
9. The status of the entity claiming the privilege; and
10. The portions of the document as to which the privilege is claimed (i.e., one sentence, one paragraph, the entire document, etc.).

E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following interrogatories pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and

divisions, departments and units thereof.

J. As used herein, "affiliate" means a company effectively controlled by another, but associated with Respondent under common ownership or control.

K. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

L. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

M. As used herein, the word "things" as hereinafter used shall refer to any tangible object that may for some reason be construed as something other than a document.

N. As used herein, "identify" or "state the identity of" means:

1. In the case of a person, to state:
  - a) Name;
  - b) Last known residence;
  - c) Employer or business affiliation;

- d) Occupation and business position held.
2. In the case of a company, to state:
- a) Name;
  - b) If incorporated, the place of incorporation;
  - c) The principal place of business;
  - d) The identity of the person or persons having knowledge of the matter with respect to which the company is named.
3. In the case of a document, to state:
- a) The type of document (e.g., letter, report, etc.);
  - b) Its date;
  - c) Its author;
  - d) The sender, if different from author;
  - e) Addressee(s);
  - f) Persons in addition to addressee(s) known to examine same;
  - g) Title, caption, or subject;
  - h) Substance of the content of the document;
  - i) Identity of persons having custody thereof;
  - j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being reproduced in response to.

4. In the case of an act;
- a) A description of the act;

- b) When it occurred;
- c) Where it occurred;
- d) The identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- e) The identity of all persons who have knowledge, information, or belief about the act;
- f) When the act or omission first became known to you;
- g) The circumstances and manner in which you first obtained such knowledge.

O. "Petitioner" refers to Ava Ruha Corproation dba Mother's Market & Kitchen.

P. As used herein, the term "Petitioner's Mark" shall mean the trademark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 1,440,871.

Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term "Respondent's Services" shall mean the services provided by Respondent in relation to the "MOTHER'S" mark, as listed on Respondent's U.S. Trademark Registration No. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these interrogatories, or subparts thereof, direct such inquiries to the undersigned.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

State when Respondent adopted and first used in commerce in the United States Respondent's Mark on Respondent's Services, identify all person(s) with knowledge of the subject matter of this request, identify all documents sufficient to support Your response to this request.

### **INTERROGATORY NO. 2:**

Identify each person who participated in the adoption of Respondent's Mark, identify all person(s) with knowledge of the subject matter of this request, identify all documents sufficient to support Your response to this request.

### **INTERROGATORY NO. 3:**

Identify all services offered or otherwise distributed by Respondent under Respondent's Mark.

### **INTERROGATORY NO. 4:**

Identify the channels of trade through which Respondent's Services are offered.

### **INTERROGATORY NO. 5:**

Identify the geographic area in which Respondent's Services are offered.

### **INTERROGATORY NO. 6:**

Identify all services offered by Respondent under Respondent's Mark.

### **INTERROGATORY NO. 7:**

Identify all channels in which Respondent's Services are advertised, e.g., newspaper, on-line, magazine, radio, television, mailers, fliers, etc., identify all person(s) with knowledge of the subject

matter of this request, identify all documents sufficient to support Your response to this request.

INTERROGATORY NO. 8:

Describe a typical customer of Respondent's Services offered under Respondent's Mark.

INTERROGATORY NO. 9:

Identify all searches conducted by Respondent in relation to Respondent's Mark.

INTERROGATORY NO. 10:

Identify seven (7) representative goods offered by Respondent under Respondent's Services.

INTERROGATORY NO. 11:

Other than Respondent's Mark, identify each other mark that Respondent has used that includes the designation "MOTHER'S", either alone or in combination with any other term or design.

INTERROGATORY NO. 12:

Identify all persons responsible for the marketing or intended marketing of services and/or services offered under Respondent's Mark.

INTERROGATORY NO. 13:

State whether Respondent is aware of any instance or occasion of confusion or mistake involving the source, origin, or sponsorship between goods or services offered or acts performed by or on behalf of Respondent or its licensees under Respondent's Mark, and goods or services offered or tendered by Petitioner.

INTERROGATORY NO. 14:

Please identify all of Respondent's registration(s) or currently pending application(s) for Respondent's Mark, or a mark incorporating the designation "MOTHER'S", in the United States Patent and Trademark Office, in any of the States of the United States, or in the Trademark Office of

any foreign country.

INTERROGATORY NO. 15:

Identify the quantity (in units) and generated revenue (in dollars) in the United States from the offering of Respondent's Services and goods sold under Respondent's Mark to the present, identify all person(s) with knowledge of the subject matter of this request, identify all documents sufficient to support Your response to this request.

INTERROGATORY NO. 16:

Identify by party names, venue, and case number any and all actions, proceedings, lawsuits, between You and any third-party involving Respondent's Mark.

INTERROGATORY NO. 17:

Identify, by name, address and title, each person who furnished information respecting the answers to the foregoing interrogatories.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: May 23, 2013

By: 

Kit M. Stetina, Reg. No. 29,445  
Stephen Z. Vegh Reg. No. 48,550  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246  
Attorneys for Petitioner,  
Ava Ruha Corporation dba Mother's Market & Kitchen



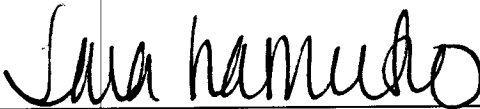
**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange        )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **May 23, 2013**, the attached **PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 33** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Rod S. Berman  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **May 23, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

**Ava Ruha Corporation dba Mother's  
Market & Kitchen,**

**Petitioner,**

**VS.**

**Mother's Nutritional Center, Inc.,**

**Respondent.**

**Cancellation No.: 92056067**

**PETITIONER'S FIRST REQUESTS FOR ADMISSIONS PURSUANT TO P.T.O. RULE**

**2.120 AND FED. R. CIV. P. 36**

Pursuant to P.T.O. Rule 2.120 and Rule 36 of the Federal Rules of Civil Procedure, Petitioner, Ava Ruha Corporation dba Mother's Market & Kitchen (hereinafter referred to as "Petitioner"), hereby propounds its First Set of Requests for Admissions to Respondent, Mother's Nutritional Center, Inc. (hereinafter referred to as "Respondent").

## **INSTRUCTIONS AND DEFINITIONS**

A. These requests shall be deemed to seek answers as of the date hereof, and to the full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these requests are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and

before this proceeding is completed.

B. The following requests shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the request relates, associated in any way with the Respondent.

C. If the answer to any request or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular request, or subdivision thereof, is not possible, the request should be answered to the extent possible, together with the reason stated why only a partial answer is given.

D. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified by providing the following information, see *Upjohn v. United States*, 449 U.S. 383 (1981):

1. The identity and position of the person or persons supplying the information;
2. The place, date and manner of recording, or otherwise providing the instrument;
3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;
4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;
6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;

8. All facts showing that the claimed privilege has not been waived;
9. The status of the entity claiming the privilege; and
10. The portions of the document as to which the privilege is claimed (i.e., one sentence, one paragraph, the entire document, etc.).

E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following requests pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments and units thereof.

J. As used herein, "affiliate" means a company effectively controlled by another, but associated with Respondent under common ownership or control.

K. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

L. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

M. As used herein, the word "things" as hereinafter used shall refer to any tangible object that may for some reason be construed as something other than a document.

N. As used herein, "identify" or "state the identity of" means:

1. In the case of a person, to state:
  - a) Name;
  - b) Last known residence;
  - c) Employer or business affiliation;

- d) Occupation and business position held.
2. In the case of a company, to state:
- a) Name;
  - b) If incorporated, the place of incorporation;
  - c) The principal place of business;
  - d) The identity of the person or persons having knowledge of the matter with respect to which the company is named.
3. In the case of a document, to state:
- a) The type of document (e.g., letter, report, etc.);
  - b) Its date;
  - c) Its author;
  - d) The sender, if different from author;
  - e) Addressee(s);
  - f) Persons in addition to addressee(s) known to examine same;
  - g) Title, caption, or subject;
  - h) Substance of the content of the document;
  - i) Identity of persons having custody thereof;
  - j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these requests and indicate on the document copy which request or sub-request the document is being reproduced in response to.

4. In the case of an act;

- a) A description of the act;
- b) When it occurred;
- c) Where it occurred;
- d) The identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- e) The identity of all persons who have knowledge, information, or belief about the act;
- f) When the act or omission first became known to you;
- g) The circumstances and manner in which you first obtained such knowledge.

O. "Petitioner" refers to Ava Ruha Corporation dba Mother's Market & Kitchen.

P. As used herein, the term "Petitioner's Mark" shall mean the trademark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 1,440,871.

Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term "Respondent's Services" shall mean the services provided by Respondent in relation to the "MOTHER'S" mark, as listed on Respondent's U.S. Trademark Registration No. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these requests, or subparts thereof, direct such inquiries to the undersigned.

### **REQUESTS FOR ADMISSIONS**

#### **REQUEST NO. 1:**

Admit that YOU use the MOTHER'S mark on grocery store services.

#### **REQUEST NO. 2:**

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services.

#### **REQUEST NO. 3:**

Admit that YOU did not begin using the MOTHER'S mark on grocery store services before May of 2007.

#### **REQUEST NO. 4:**

Admit that YOU use the MOTHER'S mark on grocery store services that offer low fat gallon size pasteurized fluid cow's milk to consumers.

#### **REQUEST NO. 5:**

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services that offer low fat gallon size pasteurized fluid cow's milk to consumers.

#### **REQUEST NO. 6:**

Admit that YOU use the MOTHER'S mark on grocery store services that offer 16 oz. low fat cheddar cheese to consumers.

#### **REQUEST NO. 7:**

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery



services that offer 16 oz. low fat cheddar cheese to consumers.

REQUEST NO. 8:

Admit that YOU use the MOTHER'S mark on grocery store services that offer a dozen size carton of white large chicken eggs to consumers.

REQUEST NO. 9:

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services that offer a dozen size carton of white large chicken eggs to consumers.

REQUEST NO. 10:

Admit that YOU use the MOTHER'S mark on grocery store services that offer a 16 oz. package of brown rice to consumers.

REQUEST NO. 11:

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services that offer a 16 oz. package of brown rice to consumers.

REQUEST NO. 12:

Admit that YOU use the MOTHER'S mark on grocery store services that offer 12 oz. packets of instant oatmeal to consumers.

REQUEST NO. 13:

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services that offer 12 oz. packets of instant oatmeal to consumers.

REQUEST NO. 14:

Admit that YOU use the MOTHER'S mark on grocery store services that offer 16-18 oz. containers of plain peanut butter to consumers.

REQUEST NO. 15:

Admit that Petitioner uses the MOTHER'S MARKET & KITCHEN mark on grocery services that offer 16-18 oz. containers of plain peanut butter to consumers.

REQUEST NO. 16:

Admit that Petitioner's grocery services directed toward natural and health products and food preparations included the offering of "common food items" in September of 2008. (For purposes of this request "common food items" includes at least one of the following: low fat gallon size pasteurized fluid cow's milk, 16 oz. low fat cheddar cheese, a dozen size carton of white large chicken eggs, 16 oz. package of brown rice, 12 oz. packets of instant oatmeal, 16-18 oz. containers of plain peanut butter.)

REQUEST NO. 17:

Admit that you knew in September of 2008 that Petitioner's grocery services directed toward natural and health products and food preparations included the offering of "common food items". (For purposes of this request "common food items" includes at least one of the following: low fat gallon size pasteurized fluid cow's milk, 16 oz. low fat cheddar cheese, a dozen size carton of white large chicken eggs, 16 oz. package of brown rice, 12 oz. packets of instant oatmeal, 16-18 oz. containers of plain peanut butter.)

REQUEST NO. 18:

Admit that you did not know in September of 2008 whether Petitioner's grocery services directed toward natural and health products and food preparations included the offering of "common food items". (For purposes of this request "common food items" includes at least one of the following: low fat gallon size pasteurized fluid cow's milk, 16 oz. low fat cheddar cheese, a dozen

size carton of white large chicken eggs, 16 oz. package of brown rice, 12 oz. packets of instant oatmeal, 16-18 oz. containers of plain peanut butter.)

REQUEST NO. 19:

Admit that you did not investigate prior to September of 2008 whether Petitioner's grocery services directed toward natural and health products and food preparations included the offering of "common food items". (For purposes of this request "common food items" includes at least one of the following: low fat gallon size pasteurized fluid cow's milk, 16 oz. low fat cheddar cheese, a dozen size carton of white large chicken eggs, 16 oz. package of brown rice, 12 oz. packets of instant oatmeal, 16-18 oz. containers of plain peanut butter.)

REQUEST NO. 20:

Admit that southern California is a commercial "hub" for both YOU and Petitioner in the offering of grocery store services.

REQUEST NO. 21:

Admit that the purchase of grocery items offered under the MOTHER'S mark is an impulse buy to consumers.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: May 23, 2013

By: 

Kit M. Stetina, Reg. No. 29,445

Stephen Z. Vegh Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Attorneys for Petitioner,

Ava Ruha Corporation dba Mother's Market & Kitchen

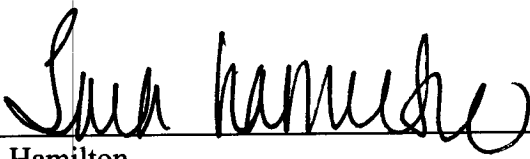
**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **May 23, 2013**, the attached **PETITIONER'S FIRST REQUESTS FOR ADMISSIONS PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 36** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Rod S. Berman  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **May 23, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton



## **INSTRUCTIONS AND DEFINITIONS**

A. These requests shall be deemed to seek answers as of the date hereof, and to the full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these requests are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and before this proceeding is completed.

B. The following requests shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the request relates, associated in any way with the Respondent.

C. If the answer to any request or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular request, or subdivision thereof, is not possible, the request should be answered to the extent possible, together with the reason stated why only a partial answer is given.

D. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified by providing the following information, see *Upjohn v. United States*, 449 U.S. 383 (1981):

1. The identity and position of the person or persons supplying the information;
2. The place, date and manner of recording, or otherwise providing the instrument;
3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;

4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;
6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;
8. All facts showing that the claimed privilege has not been waived;
9. The status of the entity claiming the privilege; and
10. The portions of the document as to which the privilege is claimed (i.e., one sentence, one paragraph, the entire document, etc.).

E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following requests pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments and units thereof.

J. As used herein, "affiliate" means a company effectively controlled by another, but associated with Respondent under common ownership or control.

K. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

L. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

M. As used herein, the word "things" as hereinafter used shall refer to any tangible object that may for some reason be construed as something other than a document.



N. As used herein, "identify" or "state the identity of" means:

1. In the case of a person, to state:

- a) Name;
- b) Last known residence;
- c) Employer or business affiliation;
- d) Occupation and business position held.

2. In the case of a company, to state:

- a) Name;
- b) If incorporated, the place of incorporation;
- c) The principal place of business;
- d) The identity of the person or persons having knowledge of the matter

with respect to which the company is named.

3. In the case of a document, to state:

- a) The type of document (e.g., letter, report, etc.);
- b) Its date;
- c) Its author;
- d) The sender, if different from author;
- e) Addressee(s);
- f) Persons in addition to addressee(s) known to examine same;
- g) Title, caption, or subject;
- h) Substance of the content of the document;
- i) Identity of persons having custody thereof;

- j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these requests and indicate on the document copy which request or sub-request the document is being reproduced in response to.

4. In the case of an act;

- a) A description of the act;
- b) When it occurred;
- c) Where it occurred;
- d) The identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- e) The identity of all persons who have knowledge, information, or belief about the act;
- f) When the act or omission first became known to you;
- g) The circumstances and manner in which you first obtained such knowledge.

O. "Petitioner" refers to Ava Ruha Corporation dba Mother's Market & Kitchen.

P. As used herein, the term "Petitioner's Mark" shall mean the trademark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 1,440,871.

Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as

filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term “Respondent’s Services” shall mean the services provided by Respondent in relation to the “MOTHER’S” mark, as listed on Respondent’s trademark registration no. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these requests, or subparts thereof, direct such inquiries to the undersigned.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Documents, electronic data and things that contain any information used to provide answers to or identified in answer to any of Respondent's responses to Petitioner’s First Set of Interrogatories to Respondent.

#### **REQUEST FOR PRODUCTION NO. 2:**

Documents, electronic data and things evidencing any searches or investigations conducted by or for Respondent in connection with Respondent's Mark.

#### **REQUEST FOR PRODUCTION NO. 3:**

Documents, electronic data and things referring to Petitioner or Petitioner’s business.

#### **REQUEST FOR PRODUCTION NO. 4:**

Documents, electronic data and things evidencing the adoption and first use in commerce of Respondent's Mark.

REQUEST FOR PRODUCTION NO. 5:

Documents, electronic data and things evidencing Respondent's first offering of services under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 6:

Documents, electronic data and things evidencing Respondent's first sale of goods under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 7:

Documents, electronic data and things commenting upon Petitioner's Mark.

REQUEST FOR PRODUCTION NO. 8:

Documents, electronic data and things evidencing any trademark or trade name applications filed by or for Respondent under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 9:

Documents, electronic data and things evidencing any actual confusion between the businesses operated by Respondent and Petitioner.

REQUEST FOR PRODUCTION NO. 10:

Any photographs, videos or other things depicting Respondent's use of Respondent's Mark.

REQUEST FOR PRODUCTION NO. 11:

Documents, electronic data and things evidencing or referring to any communications with Petitioner.

REQUEST FOR PRODUCTION NO. 12:

Specimens of each advertising and marketing material created by or for Respondent, bearing Respondent's Mark.

REQUEST FOR PRODUCTION NO. 13:

All documents and things evidencing or referring to any marketing surveys conducted by or for Respondent concerning any goods sold or services offered under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 14:

Documents evidencing or referring to Respondent's annual revenues generated from Respondent's Services or goods sold under Respondent's Mark, from 2005 to the present.

REQUEST FOR PRODUCTION NO. 15:

All price sheets evidencing or referring to prices at which Respondent sells goods or services under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 16:

All documents, electronic data and things evidencing or referring to market projections of future sales of any goods sold or services offered under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 17:

All writings including correspondence, between Respondent and any advertising agency or department and/or public relations firm(s) regarding any promotion of any goods or services under Respondent's Mark.

REQUEST FOR PRODUCTION NO. 18:

To the extent not previously produced, exemplars of all advertisements, packaging, labels, displays and other materials created by or for Respondent bearing Respondent's Mark in connection with any goods sold or services offered by Respondent, since the adoption of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 19:**

To the extent not identified or produced in response to the preceding requests, all documents on which Respondent will rely in support of Respondent's contention that United States Trademark Registration No. 3,675,027 should not be cancelled.

**REQUEST FOR PRODUCTION NO. 20:**

Documents, electronic data, and things evidencing or concerning Respondent's total advertising expenditures to market or promote Respondent's Mark or Respondent's Services.

**REQUEST FOR PRODUCTION NO. 21:**

Documents, electronic data, and things evidencing or concerning the typical purchasers and/or users of Respondent's Services, including but not limited to demographic characteristics.

**REQUEST FOR PRODUCTION NO. 22:**

Documents, electronic data, and things evidencing or concerning any licenses, assignments, agreements, and/or contracts between Respondent and any third party concerning the use of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 23:**

Documents, electronic data, and things evidencing or referring to the channels of trade through which Respondent's Services have been offered or will be offered.

**REQUEST FOR PRODUCTION NO. 24:**

Documents, electronic data, and things evidencing or concerning surveys and/or studies conducted or planned to be conducted by or on behalf of Respondent concerning Respondent's Mark, Petitioner's Mark, or the goods sold and/or services offered under Respondent's Mark and Petitioner's Mark.

REQUEST FOR PRODUCTION NO. 25:

All Documents, electronic data, and things evidencing or referring to the prosecution history of Respondent's Mark for registration in the United States and/or a foreign jurisdiction.

REQUEST FOR PRODUCTION NO. 26:

Documents, electronic data, and things evidencing or referring to the registration or listing by Respondent of the term "Mother's" and/or "Nutritional Center" with any search engine to direct traffic to a website.

REQUEST FOR PRODUCTION NO. 27:

Documents, electronic data, and things evidencing or referring to the use of the term "Mother's" and/or "Nutritional Center" in the text of any website operated by or for Respondent.

REQUEST FOR PRODUCTION NO. 28:

Documents, electronic data, and things evidencing or referring to the use of the term "Mother's" and/or "Nutritional Center" in metatags or html code associated with any website operated by or for Respondent.

REQUEST FOR PRODUCTION NO. 29:

Documents, electronic data, and things evidencing or referring to the purchase of any sponsored links referencing or including the term "Mother's" and/or "Nutritional Center" to direct traffic to any website used to market any products or services of Respondent.

REQUEST FOR PRODUCTION NO. 30:

Documents, electronic data, and things evidencing or referring to all domain names registered by or for Respondent which include the term "Mother's", "Market", and/or "Nutritional Center".

REQUEST FOR PRODUCTION NO. 31:

Documents, electronic data, and things evidencing or referring to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Respondent's use of Respondent's Mark, and any other mark including the term "Mother", "Mother's", or "Market", alone or in combination with other words or designs.

REQUEST FOR PRODUCTION NO. 32:

All Documents, electronic data, and things evidencing or referring to any and all actions, proceedings, lawsuits, between You and any third-party involving Respondent's Mark.

REQUEST FOR PRODUCTION NO. 33:

All Documents, electronic data, and things evidencing or referring to any and all communications, cease and desist letters, memos, etc., between You and any third-party involving Respondent's Mark or the use of the term "Mother", "Mother's", "Market", whether alone or in combination with other words or designs.

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REQUEST FOR PRODUCTION NO. 34:

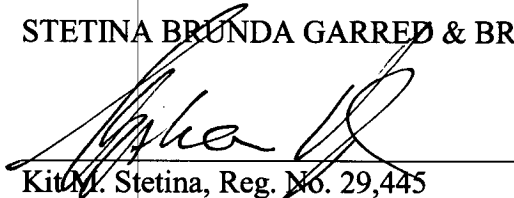
Documents, electronic data, and things evidencing or referring to the WIC (Women, Infants & Children) Authorized Food Lists issued from 2007 to the present.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: May 23, 2013

By:



Kit M. Stetina, Reg. No. 29,445

Stephen Z. Vegh Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Attorneys for Petitioner,

Ava Ruha Corporation dba Mother's Market & Kitchen

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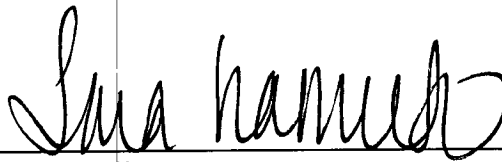
**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **May 23, 2013**, the attached **PETITIONER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 34** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Rod S. Berman  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **May 23, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton

# Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corporation dba Mother's Market & Kitchen,	)	Cancellation No.: 92056067
	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Mother's Nutritional Center, Inc.,	)	
	)	
Respondent.		

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**PETITIONER'S SECOND REQUESTS FOR ADMISSIONS PURSUANT TO P.T.O.**

**RULE 2.120 AND FED. R. CIV. P. 36**

Pursuant to P.T.O. Rule 2.120 and Rule 36 of the Federal Rules of Civil Procedure, Petitioner, Ava Ruha Corporation dba Mother's Market & Kitchen (hereinafter referred to as "Petitioner"), hereby propounds its Second Set of Requests for Admissions to Respondent, Mother's Nutritional Center, Inc. (hereinafter referred to as "Respondent").

**INSTRUCTIONS AND DEFINITIONS**

A. These requests shall be deemed to seek answers as of the date hereof, and to the full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these requests are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and

before this proceeding is completed.

B. The following requests shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the request relates, associated in any way with the Respondent.

C. If the answer to any request or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular request, or subdivision thereof, is not possible, the request should be answered to the extent possible, together with the reason stated why only a partial answer is given.

D. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified by providing the following information, see *Upjohn v. United States*, 449 U.S. 383 (1981):

1. The identity and position of the person or persons supplying the information;
2. The place, date and manner of recording, or otherwise providing the instrument;
3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;
4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;
6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;

8. All facts showing that the claimed privilege has not been waived;
9. The status of the entity claiming the privilege; and
10. The portions of the document as to which the privilege is claimed (i.e., one sentence, one paragraph, the entire document, etc.).

E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following requests pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments and units thereof.

J. As used herein, "affiliate" means a company effectively controlled by another, but associated with Respondent under common ownership or control.

K. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

L. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

M. As used herein, the word "things" as hereinafter used shall refer to any tangible object that may for some reason be construed as something other than a document.

N. As used herein, "identify" or "state the identity of" means:

1. In the case of a person, to state:
  - a) Name;
  - b) Last known residence;
  - c) Employer or business affiliation;

d) Occupation and business position held.

2. In the case of a company, to state:

a) Name;

b) If incorporated, the place of incorporation;

c) The principal place of business;

d) The identity of the person or persons having knowledge of the matter

with respect to which the company is named.

3. In the case of a document, to state:

a) The type of document (e.g., letter, report, etc.);

b) Its date;

c) Its author;

d) The sender, if different from author;

e) Addressee(s);

f) Persons in addition to addressee(s) known to examine same;

g) Title, caption, or subject;

h) Substance of the content of the document;

i) Identity of persons having custody thereof;

j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these requests and indicate on the document copy which request or sub-request the document is being reproduced in response to.

4. In the case of an act;



- a) A description of the act;
- b) When it occurred;
- c) Where it occurred;
- d) The identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- e) The identity of all persons who have knowledge, information, or belief about the act;
- f) When the act or omission first became known to you;
- g) The circumstances and manner in which you first obtained such knowledge.

O. "Petitioner" refers to Ava Ruha Corporation dba Mother's Market & Kitchen.

P. As used herein, the term "Petitioner's Mark" shall mean the trademark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 1,440,871.

Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term "Respondent's Services" shall mean the services provided by Respondent in relation to the "MOTHER'S" mark, as listed on Respondent's U.S. Trademark Registration No. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these requests, or subparts thereof, direct such inquiries to the undersigned.

### **REQUESTS FOR ADMISSIONS**

REQUEST NO. 22:

Admit that YOU accept Electronic Benefit Transfer (hereinafter "EBT") payments from YOUR customers under the federal food assistance program referred to as the Supplemental Nutrition Assistance Program ("SNAP") for the purchase of groceries at YOUR grocery stores.

REQUEST NO. 23:

Admit that some of YOUR customers participate in the federal food assistance program referred to as the Supplemental Nutrition Assistance Program ("SNAP").

REQUEST NO. 24:

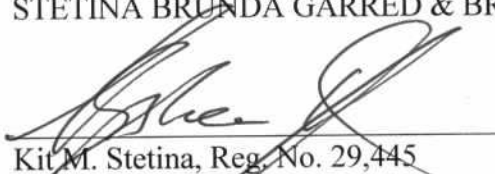
Admit that the Supplemental Nutrition Assistance Program ("SNAP") and the Special Supplemental Nutrition Program for Women, Infants and Children ("WIC") are both federal food assistance programs of the United States Department of Agriculture.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: October 3, 2013

By:



Kit M. Stetina, Reg. No. 29,445

Stephen Z. Vegh Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Attorneys for Petitioner,

Ava Ruha Corporation dba Mother's Market & Kitchen

**PROOF OF SERVICE**

State of California     )  
                                  ) ss.  
County of Orange        )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **October 3, 2013**, I caused the attached **PETITIONER'S SECOND REQUESTS FOR ADMISSIONS PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 36** to be personally served on all interested parties in this action at the address as follows:

Rod S. Berman  
Jessica C. Bromall  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **October 3, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corporation dba Mother's	)	Cancellation No.: 92056067
Market & Kitchen,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Mother's Nutritional Center, Inc.,	)	
	)	
Respondent.	)	

**PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND**  
**THINGS TO RESPONDENT PURSUANT TO P.T.O. RULE 2.120 AND**  
**FED. R. CIV. P. 34**

Pursuant to P.T.O. Rule 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Petitioner, Ava Ruha Corporation dba Mother's Market & Kitchen (hereinafter referred to as "Petitioner"), requests that Respondent, Mother's Nutritional Center, Inc. (hereinafter referred to as "Respondent"), produce copies of the documents identified below at the offices of STETINA BRUNDA GARRED & BRUCKER, 75 Enterprise, Suite 250, Aliso Viejo, California 92656, Telephone: (949) 855-1246, within thirty (30) days from the date of service of this document and further, that such documents be organized and labeled to correspond with the categories in the request pursuant to F.R.C.P. Rule 34(b).

## **INSTRUCTIONS AND DEFINITIONS**

A. These requests shall be deemed to seek answers as of the date hereof, and to the full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these requests are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and before this proceeding is completed.

B. The following requests shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the request relates, associated in any way with the Respondent.

C. If the answer to any request or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular request, or subdivision thereof, is not possible, the request should be answered to the extent possible, together with the reason stated why only a partial answer is given.

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1. The identity and position of the person or persons supplying the information;
2. The place, date and manner of recording, or otherwise providing the instrument;
3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;

4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;
6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;
8. All facts showing that the claimed privilege has not been waived;
9. The status of the entity claiming the privilege; and
10. The portions of the document as to which the privilege is claimed (i.e., one sentence, one paragraph, the entire document, etc.).

E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following requests pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments and units thereof.

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K. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

L. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

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1. In the case of a person, to state:
  - a) Name;
  - b) Last known residence;
  - c) Employer or business affiliation;
  - d) Occupation and business position held.
2. In the case of a company, to state:
  - a) Name;
  - b) If incorporated, the place of incorporation;
  - c) The principal place of business;
  - d) The identity of the person or persons having knowledge of the matter with respect to which the company is named.
3. In the case of a document, to state:
  - a) The type of document (e.g., letter, report, etc.);
  - b) Its date;
  - c) Its author;
  - d) The sender, if different from author;
  - e) Addressee(s);
  - f) Persons in addition to addressee(s) known to examine same;
  - g) Title, caption, or subject;
  - h) Substance of the content of the document;
  - i) Identity of persons having custody thereof;



- j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these requests and indicate on the document copy which request or sub-request the document is being reproduced in response to.

- 4. In the case of an act;
  - a) A description of the act;
  - b) When it occurred;
  - c) Where it occurred;
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Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as

filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term "Respondent's Services" shall mean the services provided by Respondent in relation to the "MOTHER'S" mark, as listed on Respondent's trademark registration no. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these requests, or subparts thereof, direct such inquiries to the undersigned.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 35:**

All documents, electronic data and things evidencing YOUR participation in the federal food assistance program referred to as Supplemental Nutrition Assistance Program ("SNAP").

#### **REQUEST FOR PRODUCTION NO. 36:**

All documents, electronic data and things evidencing or referring to YOUR acceptance of Electronic Benefit Transfer payments by YOUR customers for groceries purchased at YOUR grocery stores under the Supplemental Nutrition Assistance Program ("SNAP").

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: October 3, 2013

By: 

K.M. Stetina, Reg. No. 29,445

Stephen Z. Vogt Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Attorneys for Petitioner,

Ava Ruha Corporation dba Mother's Market & Kitchen

**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange        )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **October 3, 2013**, I caused the attached **PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 34** to be personally served on all interested parties in this action at the address as follows:

Rod S. Berman  
Jessica C. Bromall  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **October 3, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corproation dba Mother's	)	Cancellation No.: 92056067
Market & Kitchen,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Mother's Nutritional Center, Inc.,	)	
	)	
Respondent.	)	

---

**PETITIONER'S SECOND SET OF INTERROGATORIES TO RESPONDENT**

**PURSUANT TO P.T.O. RULE 2.120 AND FED. R. CIV. P. 33**

Petitioner, Ava Ruha Corproation dba Mother's Market & Kitchen (hereinafter referred to as "Petitioner"), hereby propounds the following interrogatories to Respondent, Mother's Nutritional Center, Inc. (hereinafter referred to as "Respondent"), in accordance with Patent and Trademark Office Rule 2.120 and Rule 33 of the Federal Rules of Civil Procedure. Each interrogatory shall be answered separately and fully, through officers or agents thereof competent to testify on Respondent's behalf, in writing under oath, unless objected to, in which event the reason for objection shall be stated in lieu of an answer.

**INSTRUCTIONS AND DEFINITIONS**

- A. These interrogatories shall be deemed to seek answers as of the date hereof, and to the

full extent permitted under the Federal Rules of Civil Procedure. Furthermore, these interrogatories are of a continuing nature, and Respondent is required to file and serve supplemental responses if Respondent obtains further or different information after the date of Respondent's initial answer and before this proceeding is completed.

B. The following interrogatories shall be construed as addressed to the Respondent, any of Respondent's subsidiaries, affiliated corporations, and any other corporations or business enterprises controlled by Respondent that are presently or were at the time to which the interrogatory relates, associated in any way with the Respondent.

C. If the answer to any interrogatory or subpart thereof is "none", or if a section is not applicable, so indicate rather than leaving the space blank. When a complete answer to a particular interrogatory, or subdivision thereof, is not possible, the interrogatory should be answered to the extent possible, together with the reason stated why only a partial answer is given.

D. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified by providing the following information, see *Upjohn v. United States*, 449 U.S. 383 (1981):

1. The identity and position of the person or persons supplying the information;
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3. The names of the person or persons other than stenographic or clerical assistance participating in the preparation of the documents;
4. The name and position of each person to whom the content of the document is addressed or communicated to by copying, exhibiting, reading, or substantial summarization;
5. A general description of the subject matter of the document;

6. The type of privilege claimed (attorney/client or work product);
7. The basis for the claim of privilege;
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E. If information requested is not available from Respondent's records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

F. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory.

G. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following interrogatories pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

H. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

I. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and

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  - b) Last known residence;
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- d) Occupation and business position held.
2. In the case of a company, to state:
- a) Name;
  - b) If incorporated, the place of incorporation;
  - c) The principal place of business;
  - d) The identity of the person or persons having knowledge of the matter with respect to which the company is named.
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- a) The type of document (e.g., letter, report, etc.);
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  - c) Its author;
  - d) The sender, if different from author;
  - e) Addressee(s);
  - f) Persons in addition to addressee(s) known to examine same;
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  - h) Substance of the content of the document;
  - i) Identity of persons having custody thereof;
  - j) Identity of person or persons who can identify the document.

In lieu of such identification, Respondent may simply provide a copy of the document with its answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being reproduced in response to.

4. In the case of an act;
- a) A description of the act;



- b) When it occurred;
- c) Where it occurred;
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Q. As used herein, the term "Petitioner's Services" shall mean the services listed on Petitioner's Trademark Registration No. 1,440,871.

R. As used herein, the term "Respondent's Mark" shall mean the mark "MOTHER'S" as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027.

S. As used herein, the term "Respondent's Services" shall mean the services provided by Respondent in relation to the "MOTHER'S" mark, as listed on Respondent's U.S. Trademark Registration No. 3,675,027.

T. If Respondent has any questions concerning the meaning, interpretation or answers to these interrogatories, or subparts thereof, direct such inquiries to the undersigned.

## INTERROGATORIES

### INTERROGATORY NO. 18:

Identify the percentage of YOUR revenues each year from 2008 to the present that is derived from the purchase of groceries by YOUR customers under the federal food assistance program referred to as the Supplemental Nutrition Assistance Program ("SNAP").

### INTERROGATORY NO. 19:

Identify the addresses of each of YOUR grocery stores offering Respondent's Services under Respondent's Mark.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: October 3, 2013

By:



Kit M. Stetina, Reg. No. 29,445

Stephen Z. Vegh, Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Attorneys for Petitioner,

Ava Ruha Corporation dba Mother's Market & Kitchen

**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
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I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **October 3, 2013**, I caused the attached **PETITIONER'S SECOND SET OF INTERROGATORIES TO RESPONDENT PURSUANT TO PTO RULE 2.120 AND FED. R. CIV. P. 33** to be personally served on all interested parties in this action at the address as follows:

Rod S. Berman  
Jessica C. Bromall  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **October 3, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton

# Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Registration No. 3,675,027**

Ava Ruha Corporation dba Mother's Market & Kitchen,	)	Cancellation Nos.:
	)	
Petitioner,	)	92056067 for Registration No. 3675027
	)	For the Mark MOTHER'S (stylized)
vs.	)	
	)	And
Mother's Nutritional Center, Inc.,	)	92056080 for Registration No. 3675056
	)	For the Mark MOTHER'S NUTRITIONAL
<u>Respondent.</u>		CENTER

**NOTICE OF 30(B)(6) DEPOSITION OF MOTHERS NUTRITIONAL  
CENTER, INC.**

TO EACH PARTY AND ITS ATTORNEY OF RECORD IN THIS ACTION:

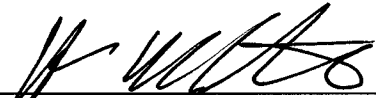
PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Rule 66, LLC, by and through its undersigned counsel, shall take the deposition upon oral examination of Respondent Mother's Nutritional Center, Inc.'s designated corporate representative regarding the topics listed in Exhibit A attached hereto. The deposition of Mother's Nutritional Center, Inc. shall begin at 9:00 am on March 13, 2015 at the offices of Stetina Brunda Garred & Brucker located at 75 Enterprise, Suite 250, Aliso Viejo, California 92656, and will continue from day-to-day until completed. The deposition will be taken by stenographic means before a certified court reporter authorized by law to take depositions and may be videotaped. The

deposition will be taken for discovery, use in evidence at trial, and all other purposes permitted under the law.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(b)(6), Mother's Nutritional Center, Inc. has the duty to designate one or more corporate representatives to speak for Mother's Nutritional Center, Inc. regarding the topics listed in Exhibit A hereto. The representative(s) must testify to all matters known or reasonably available to Mother's Nutritional Center, Inc. as a corporation on these topics. This may require Mother's Nutritional Center, Inc. to gather documents and information and have the representative(s) review and become familiar with this material prior to the deposition.

STETINA BRUNDA GARRED & BRUCKER

Dated: 3/4/15

By: 

Kit M. Stetina, Reg. No. 29,445

Stephen Z. Vegh, Reg. No. 48,550

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Counsel for Petitioner

## **EXHIBIT A**

### **DEFINITIONS**

A. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively, and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

B. As used herein, the term "You," "Your," "Respondent" means the Respondent, Respondent's predecessors, successors, assignees, divisions, subsidiaries, licensees, franchisees or affiliates, and includes Respondent's present and former officers, directors, partners, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of the Respondent, or entities related to Respondent. Where any of the following requests pertain to more than a single entity including Respondent and/or any of Respondent's related companies, answer separately for each such entity, identifying the entity to which such answer pertains.

C. As used herein, the term "subsidiary" means any business enterprise, the operations of which are subject to Respondent's control through whole or partial ownership of the capital stock.

D. As used herein, the term "person" or "persons" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments and units thereof.

E. As used herein, "affiliate" means a company effectively controlled by another, but associated with Respondent under common ownership or control.

F. As used herein, the word "Document" or "Documents" shall include, without limitation, the following (together with any copies thereof to the extent they

differ in any respect, or from another copy): letters, memorandum, disks, tapes and/or video recordings, invoices, agreements, licenses, diagrams, hand written notes, periodicals, other publications, pamphlets, reports, records, studies, instruction sheets, working papers, charts, papers, graphs, indices, data sheets, data processing cards, tapes, labels, containers, including originals or copies of the above whether printed, recorded, filmed, written by hand or reproduced by any other process, and any other data compilations from which information can be obtained.

G. As used herein, the term "Electronic data" is defined as all information generated, recorded, preserved, or maintained by electronic means, including, but not limited to, information generated, recorded, preserved, or maintained on computer hard-drives, floppy disks, computer files, deleted computer files, back-up computer files, magnetic tapes, CD-ROM, computer archives, computer memory, or any other forms of computer readable storage media.

H. As used herein, the word "things" as hereinafter used shall refer to any tangible object that may for some reason be construed as something other than a document.

I. "Petitioner" refers to Ava Ruha Corporation dba Mother's Market & Kitchen.

J. As used herein, the term "Petitioner's Marks" shall collectively mean the design service mark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 1,440,871, and the standard character service mark MOTHER'S MARKET & KITCHEN, filed with and issued by the United States Patent and Trademark Office and



assigned U.S. Trademark Registration No. 4,351,038.

K. As used herein, the term “Petitioner’s Services” shall mean the services listed on Petitioner’s Trademark Registration Nos. 1,440,871 and 4,351,038.

L. As used herein, the term "Respondent's Marks" shall collectively mean the mark “MOTHER’S” as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,027, and the mark “MOTHER’S NUTRITIONAL CENTER” as filed with and issued by the United States Patent and Trademark Office and assigned U.S. Trademark Registration No. 3,675,056.

M. As used herein, the term “Respondent’s Services” shall mean the services provided by Respondent in relation to the “MOTHER’S” mark, as listed on Respondent’s trademark registration no. 3,675,027, and the services provided by Respondent in relation to the “MOTHER’S NUTRITIONAL CENTER” mark, as listed on Respondent’s trademark registration no. 3,675,056.

N. If Respondent has any questions concerning the meaning, interpretation or answers to these requests, or subparts thereof, direct such inquiries to the undersigned.

### **CATEGORIES**

1. The use of Respondent’s Marks on Respondent’s Services or related Services.

2. The actual and/or planned channels of trade for Respondent’s Services bearing Respondent’s Marks.

3. The individuals or businesses to whom Respondent has or may have directed its marketing efforts for Respondent’s Services under Respondent’s Marks.

4. A typical user of Respondent’s Services under Respondent’s Marks.

5. When Respondent first adopted and began to use Respondent's Marks.
6. When Respondent first began use of Respondent's Marks in interstate commerce.
7. The logotypes, designs, or labels depicting Respondent's use of Respondent's Marks, alone or in combination with other words or designs.
8. The manner in which Respondent's Marks, used alone or in combination with other words or designs, are applied to products or services sold or offered by Respondent.
9. The use of Respondent's Marks on grocery services for the sale of food products or related goods.
10. The prices at which food products or related goods are offered for sale or sold through grocery services using Respondent's Marks.
11. All contacts or communications between Respondent and any person (other than Respondent's counsel) referring to Petitioner or claims made by Petitioner regarding Respondent's Mark.
12. Any searches or investigations conducted by or on behalf of Respondent in relation to Respondent's Marks or Petitioner's Marks.
13. The registration or listing by Respondent of the terms "Mother's" with any search engine to direct traffic to a website.
14. The use of the terms "Mother's" in the text of any website, metatags, or html code operated by or for Respondent.
15. Domain names registered by or for Respondent which include the term "Mother's".

16. All trademarks or trade names including the term “Mother’s”, alone or in combination with other words or designs, which Respondent has registered or sought to register.

17. The actual or planned advertising of Respondent’s Services bearing Respondent’s Marks.

18. The marketing and promotion of Respondent’s Services bearing Respondent’s Marks.

19. Any instance or occasion of confusion or mistake involving the source, origin, or sponsorship between goods or services offered or act performed by or on behalf of Petitioner or its licensees under Petitioner’s Marks, and goods or services offered or tendered by Respondent or its licensees under Respondent’s Marks.

20. Any instance or occasion of confusion or mistake involving the source, origin, or sponsorship between goods or services offered or acts performed by or on behalf of Respondent or its licensees under Respondent’s Marks, and goods or services offered by a third party or its licensees.

21. The similarities and differences between the Petitioner’s Marks and Respondent’s Marks.

22. The similarities and differences between Petitioner’s Services and Respondent’s Services.

23. The similarities and differences between the channels of trade through which Petitioner’s Services are offered and Respondent’s Services are offered.

24. Communications between Petitioner and Respondent regarding Respondent’s Marks.

25. Respondent's expenditures on advertising to promote Respondent's Marks or Respondent's Services.

26. The licensing of Respondent's Marks or any substantially similar mark including the term "Mother's" as part of the word and/or design mark.

27. Respondent's revenue (by dollar volume) from the sale of goods or services offered under Respondent's Marks.

28. Respondent's responses and supplemental responses to interrogatories propounded by Petitioner.

29. Respondent's responses and supplemental responses to requests for production propounded by Respondent.

30. Respondent's responses and supplemental responses to requests for admission propounded by Respondent.

31. The factual basis for the allegations and affirmative defenses asserted in Respondent's Answers to Petitioner's various Petitions to Cancel.

32. Respondent's communications with any expert retained by Petitioner in this proceeding.

33. The design and implementation of surveys and/or studies conducted by or on behalf of Respondent in relation to this proceeding concerning the actual or likelihood of confusion between goods and/or services offered by or on behalf of Respondent or its licensees under Respondent's Marks, and goods and/or services offered by or on behalf of Petitioner or its licensees under Petitioner's Marks.

34. Documents produced by Respondent in this proceeding.

35. Respondent's Initial Disclosures in this proceeding.

36. The prosecution of Respondent's Marks before the United States Patent and Trademark Office.

37. Other lawsuits, administrative proceedings, etc. to which Respondent has been or is a party wherein Respondent's Marks and/or the right to use a designation containing the term "Mother's" was at issue.

38. Communications with third-parties claiming that their use of a designation including the term "Mother" or "Mother's" creates a likelihood of confusion with Respondent's Marks.

39. Respondent's grocery store addresses offering Respondent's Services under Respondent's Marks.

40. The number and location of Respondent's grocery stores offering Respondent's Services under Respondent's Marks from 1998 to the present.

41. Respondent's participation in the Supplemental Nutrition Assistance Program ("SNAP") administered by the U.S. Department of Agriculture.

42. Respondent's acceptance of Electronic Benefit Transfer payments from customers using Respondent's Services under the Supplemental Nutrition Assistance Program.

43. The method of payment accepted by Respondent from customers purchasing food products offered through Respondent's Services.

44. Respondent's revenues derived from payments made by or on behalf of customers using Respondent's Services under the Supplemental Nutrition Assistance Program.

45. Respondent's participation in the WIC (Woman, Infants & Children) food

program.

**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **March 4, 2015**, the attached **NOTICE OF 30(B)(6) DEPOSITION OF MOTHERS NUTRITIONAL CENTER, INC.** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Rod S. Berman  
Jessica C. Bromall  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars  
7<sup>th</sup> Floor  
Los Angeles, CA 90067

Executed on **March 4, 2015** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



---

Renee Lau

# Exhibit D



---

**From:** Bromall Sparkman, Jessica [<mailto:JZB@JMBM.COM>]  
**Sent:** Monday, March 09, 2015 5:02 PM  
**To:** Stephen Z. Vegh  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Stephen –

Attached are supplemental responses to ARC's second set of interrogatories, and documents bates stamped MCN000380-000381.

Regarding your request that we supplement our responses to Request for Production Nos. 35 and 36, we note that the requests are, among other things, fatally vague and overbroad. As written they appear to require our client to search for and produce, among other things, every receipt for every individual purchase made with SNAP benefits over a period of 5 years. However, if you provide clarification or a narrowing construction, we will consider supplementing our response. As I indicated on the telephone last week, I am happy to discuss this issue.

As we also discussed last week, I am investigating availability of the witnesses for deposition, and will get back to you on that subject shortly. We are happy to host the depositions in our offices, which may make scheduling easier. Let us know if you are willing to move the depositions to our offices in Century City.

Best regards,

Jessica

**Jessica Bromall Sparkman** | Partner  
**Jeffer Mangels Butler & Mitchell LLP | JMBM**  
1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067  
**D:** (310) 712-6838 | **E:** [JBromall@JMBM.com](mailto:JBromall@JMBM.com)  
**VCARD** | [BIO](#) | [LINKEDIN](#)



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# Exhibit E

---

**From:** Bromall Sparkman, Jessica [<mailto:JZB@JMBM.COM>]  
**Sent:** Thursday, March 12, 2015 12:38 PM  
**To:** Stephen Z. Vegh  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Stephen –

Richard Flores and Gloria Martinez are not available for deposition tomorrow. I expect to provide you with alternative dates tomorrow, or early next week.

Regards,

Jessica

---

**From:** Bromall Sparkman, Jessica  
**Sent:** Monday, March 09, 2015 5:02 PM  
**To:** 'svegh@stetinalaw.com'  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Stephen –

Attached are supplemental responses to ARC's second set of interrogatories, and documents bates stamped MCN000380-000381.

Regarding your request that we supplement our responses to Request for Production Nos. 35 and 36, we note that the requests are, among other things, fatally vague and overbroad. As written they appear to require our client to search for and produce, among other things, every receipt for every individual purchase made with SNAP benefits over a period of 5 years. However, if you provide clarification or a narrowing construction, we will consider supplementing our response. As I indicated on the telephone last week, I am happy to discuss this issue.

As we also discussed last week, I am investigating availability of the witnesses for deposition, and will get back to you on that subject shortly. We are happy to host the depositions in our offices, which may make scheduling easier. Let us know if you are willing to move the depositions to our offices in Century City.

Best regards,

Jessica

**Jessica Bromall Sparkman** | Partner

**Jeffer Mangels Butler & Mitchell LLP | JMBM**

1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067

**D:** (310) 712-6838 | **E:** [JBromall@JMBM.com](mailto:JBromall@JMBM.com)

**VCARD** | [BIO](#) | [LINKEDIN](#)



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# Exhibit F

---

**From:** Stephen Z. Vegh  
**Sent:** Tuesday, March 31, 2015 4:31 PM  
**To:** 'Bromall Sparkman, Jessica'  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** RE: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Jessica, I never did receive the deposition dates you agreed to provide below. Please advise at your earliest opportunity.

Thanks,

Stephen Vegh

---

**From:** Bromall Sparkman, Jessica [<mailto:JZB@JMBM.COM>]  
**Sent:** Thursday, March 12, 2015 5:59 PM  
**To:** Stephen Z. Vegh  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Stephen –

Attached is a courtesy copy of our objection to the 30(b)(6) deposition notice to our client, which is being served by mail today.

Regards,  
Jessica

---

**From:** Bromall Sparkman, Jessica  
**Sent:** Thursday, March 12, 2015 12:38 PM  
**To:** [svegh@stetinalaw.com](mailto:svegh@stetinalaw.com)  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Stephen –

Richard Flores and Gloria Martinez are not available for deposition tomorrow. I expect to provide you with alternative dates tomorrow, or early next week.

Regards,

Jessica

# Exhibit G

---

**From:** Bromall Sparkman, Jessica [<mailto:JZB@JMBM.COM>]  
**Sent:** Tuesday, March 31, 2015 5:41 PM  
**To:** Stephen Z. Vegh  
**Cc:** [JBerkowitz@neufeldmarks.com](mailto:JBerkowitz@neufeldmarks.com); Berman, Rod S.; West, Shirley  
**Subject:** FW: Ava Ruha Corp v. Mother's Nutritional (66309-0008) [JMBM-LA.66309.0008.FID1213428]

Stephen –

I will be back to you shortly regarding deposition dates. In the meantime, Jeff Berkowitz let me know that he has been trying to reach you without success, and asked me to ask that you get in touch with him. His contact information is below.

Best regards,

Jessica

Jeffrey Berkowitz  
Neufeld Marks, a Professional Corporation  
315 West Ninth Street, Suite 501, Los Angeles, CA 90015  
Tel: (213) 229-2460  
Fax: (213) 545-0049  
Email: [jberkowitz@neufeldmarks.com](mailto:jberkowitz@neufeldmarks.com)  
[www.neufeldmarks.com](http://www.neufeldmarks.com)

---

**From:** Stephen Z. Vegh [<mailto:svegh@stetinalaw.com>]  
**Sent:** Tuesday, March 31, 2015 4:32 PM  
**To:** Bromall Sparkman, Jessica  
**Cc:** Berman, Rod S.; West, Shirley  
**Subject:** RE: Ava Ruha Corp v. Mother's Nutritional (66309-0008)

Jessica, I never did receive the deposition dates you agreed to provide below. Please advise at your earliest opportunity.

Thanks,

Stephen Vegh

---

**From:** Bromall Sparkman, Jessica [<mailto:JZB@JMBM.COM>]  
**Sent:** Thursday, March 12, 2015 5:59 PM  
**To:** Stephen Z. Vegh



# Exhibit H

---

**From:** Bromall Sparkman, Jessica <JZB@JMBM.COM>  
**Sent:** Wednesday, May 20, 2015 5:31 PM  
**To:** Stephen Z. Vegh  
**Cc:** Tara L. Hamilton; Berman, Rod S.; West, Shirley  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center [JMBM-LA.66309.0008.FID1213428]

Stephen –

Our client is discussing your proposal internally. We will let you know their response once we receive it.

An additional week extension for the discovery, until May 28, is fine, provided we can again extend the case dates by 30 days. If that works, please go ahead and file the stipulation.

Best regards,

Jessica

---

**From:** Stephen Z. Vegh [<mailto:svegh@stetinalaw.com>]  
**Sent:** Wednesday, May 20, 2015 10:10 AM  
**To:** Bromall Sparkman, Jessica  
**Cc:** Tara L. Hamilton  
**Subject:** Fw: Ava Ruha v. Mother's Nutritional Center

Jessica,

Do you know when we can expect a response to the settlement proposal below?

I note that our client's discovery responses are due tomorrow, per your last extension. May we have an additional extension, while your client is considering its response to the settlement proposal? Assuming you expect to provide such a response within the next day or so, perhaps an additional week extension on the discovery responses would be appropriate.

Please let me know.

Thanks,

Stephen Vegh

---

# Exhibit I

---

**From:** Bromall Sparkman, Jessica <JZB@JMBM.COM>  
**Sent:** Wednesday, May 27, 2015 5:16 PM  
**To:** Stephen Z. Vegh  
**Cc:** Tara L. Hamilton; Berman, Rod S.; West, Shirley  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center [JMBM-LA.66309.0008.FID1213428]

Stephen –

A 14 day extension is fine. Hopefully this will allow us time to provide our client's comments, and have your client's response before the discovery comes due.

Regards,

Jessica

---

**From:** Stephen Z. Vegh [mailto:svegh@stetinalaw.com]  
**Sent:** Wednesday, May 27, 2015 3:14 PM  
**To:** Bromall Sparkman, Jessica  
**Cc:** Tara L. Hamilton; Berman, Rod S.; West, Shirley  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center [JMBM-LA.66309.0008.FID1213428]

Jessica,

We held on filing the extension with the Board so that we'd be closer to the discovery cut-off date of June 12. We shall file it next week.

Our client has held off finalizing its responses to discovery in anticipation of receiving MNC's response to our last settlement proposal. As the extended date is now tomorrow, and we've still not heard back from you, could you please extend the date by another week, assuming you'll be getting us a response by the end of this week? If you anticipate a longer delay, we would request a 14-day extension. In the alternative, perhaps we could stay the proceedings for a short period to allow the parties to continue to discuss settlement.

Please advise at your earliest opportunity.

Thanks,

Stephen Vegh

---

# Exhibit J

---

**From:** Jeffrey Berkowitz [<mailto:JBerkowitz@bcrlegal.com>]

**Sent:** Friday, July 31, 2015 4:38 PM

**To:** Stephen Z. Vegh

**Cc:** 'Paul S. Marks'; 'Jennifer MikoLevine'

**Subject:** Ava Ruha v. Mother's Nutritional Center

We have now substituted into the case. Are you available for a call on Monday?. If so let me know some times that will work for you.

Thanks.

Stephen,

As Jessica Sparkman advised this firm will be substituting into the case on behalf of Mother's Nutritional Center. Paul Marks of my prior firm Neufeld Marks also will be substituting in as my co- counsel. I will be out of the country next week so please correspond with Paul on a matter involving this case. Above is his email and his direct dial number is 213-229-2466.

Thank you and Paul and I will be in touch with you after we receive the file.

Jeffrey Berkowitz  
Berkowitz Cohen & Rennett, a Professional Law Corporation  
9171 Wilshire Boulevard, Suite 400  
Beverly Hills, California 90210  
Tel: (424) 777-4790  
Fax: (310) 777-0441  
Email: [jberkowitz@bcrlegal.com](mailto:jberkowitz@bcrlegal.com)

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# Exhibit K



**From:** Paul S. Marks  
**Sent:** Wednesday, September 02, 2015 4:08 PM  
**To:** 'Stephen Z. Vegh'; Jeffrey Berkowitz  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Stephen – may I propose that you and I come up with our available dates to present to the witnesses? My open dates are: Sept 11, 15, 17, 22, 24, and 25. I am in trial starting on the 28<sup>th</sup>.

Please advise which of these dates work for you and I will run it past the witnesses. Thank you.

**From:** Stephen Z. Vegh [<mailto:svegh@stetinalaw.com>]  
**Sent:** Tuesday, September 01, 2015 6:42 PM  
**To:** Jeffrey Berkowitz; Paul S. Marks  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Counsel,

Following up on our call a week ago, can you please provide the date(s) on which Richard Flores and Gloria Martinez would be available for deposition? Additionally, please look into the availability of Juan-Carlos Monnaco, as we'd like to depose him as well. Please provide several possible dates for these individuals throughout the second half of September. Should I not hear from you by the end of this week, I'll have no choice but to notice these depositions unilaterally.

Thanks in advance for your cooperation.

Stephen Vegh

**From:** Jeffrey Berkowitz [<mailto:JBerkowitz@bcrlegal.com>]  
**Sent:** Monday, August 24, 2015 5:51 PM  
**To:** Stephen Z. Vegh; Paul S. Marks  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Great. We will call you.

Jeffrey Berkowitz  
Berkowitz Cohen & Rennett, a Professional Law Corporation  
9171 Wilshire Boulevard, Suite 400  
Beverly Hills, California 90210  
Tel: (424) 777-4790  
Fax: (310) 777-0441  
Email: [jberkowitz@bcrlegal.com](mailto:jberkowitz@bcrlegal.com)

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# Exhibit L

---

**From:** Paul S. Marks [<mailto:PMarks@neufeldmarks.com>]  
**Sent:** Wednesday, September 09, 2015 2:43 PM  
**To:** Stephen Z. Vegh; 'Jeffrey Berkowitz'  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Dear Stephen:

I left you a voice message before the holiday, but I don't think I have heard from you. Can you and I and Jeff get on a call to discuss not only deposition dates, but also the entire case?

Please advise of your availability.

Thank you.

Paul

# Exhibit M

**From:** Stephen Z. Vegh [mailto:svegh@stetinalaw.com]  
**Sent:** Friday, September 11, 2015 3:35 PM  
**To:** Paul S. Marks <PMarks@neufeldmarks.com>; Jeffrey Berkowitz <JBerkowitz@bcrlegal.com>  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

I can't do depositions on the 15-18<sup>th</sup> of September, the rest of September looks pretty good.

---

**From:** Paul S. Marks [mailto:PMarks@neufeldmarks.com]  
**Sent:** Wednesday, September 09, 2015 2:43 PM  
**To:** Stephen Z. Vegh; 'Jeffrey Berkowitz'  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Dear Stephen:

I left you a voice message before the holiday, but I don't think I have heard from you. Can you and I and Jeff get on a call to discuss not only deposition dates, but also the entire case?

Please advise of your availability.

Thank you.

Paul

# Exhibit N

---

**From:** Jeffrey Berkowitz [<mailto:JBerkowitz@bcrlegal.com>]

**Sent:** Friday, September 11, 2015 3:47 PM

**To:** Stephen Z. Vegh; Paul S. Marks

**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Works for me.

Jeffrey Berkowitz

Berkowitz Cohen & Rennett, a Professional Law Corporation

9171 Wilshire Boulevard, Suite 400

Beverly Hills, California 90210

Tel: (424) 777-4790

Fax: (310) 777-0441

Email: [jberkowitz@bcrlegal.com](mailto:jberkowitz@bcrlegal.com)

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---

**From:** Stephen Z. Vegh [<mailto:svegh@stetinalaw.com>]

**Sent:** Friday, September 11, 2015 3:40 PM

**To:** Jeffrey Berkowitz <[JBerkowitz@bcrlegal.com](mailto:JBerkowitz@bcrlegal.com)>; Paul S. Marks <[PMarks@neufeldmarks.com](mailto:PMarks@neufeldmarks.com)>

**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

I can do a short call around 10:30am on Monday.

---

**From:** Jeffrey Berkowitz [<mailto:JBerkowitz@bcrlegal.com>]

**Sent:** Friday, September 11, 2015 3:33 PM

**To:** Stephen Z. Vegh; Paul S. Marks

**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

Can we have a call early next week to discuss the case?

Jeffrey Berkowitz

Berkowitz Cohen & Rennett, a Professional Law Corporation

9171 Wilshire Boulevard, Suite 400

Beverly Hills, California 90210  
Tel: (424) 777-4790  
Fax: (310) 777-0441  
Email: [jberkowitz@bcrlegal.com](mailto:jberkowitz@bcrlegal.com)

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**From:** Stephen Z. Vegh [<mailto:svegh@stetinalaw.com>]  
**Sent:** Friday, September 11, 2015 3:35 PM  
**To:** Paul S. Marks <[PMarks@neufeldmarks.com](mailto:PMarks@neufeldmarks.com)>; Jeffrey Berkowitz <[JBerkowitz@bcrlegal.com](mailto:JBerkowitz@bcrlegal.com)>  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center

I can't do depositions on the 15-18<sup>th</sup> of September, the rest of September looks pretty good.

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# Exhibit O

**Stephen Z. Vegh**

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**From:** Stephen Z. Vegh  
**Sent:** Thursday, October 01, 2015 12:31 PM  
**To:** 'Jeffrey Berkowitz'  
**Cc:** 'Paul S. Marks'  
**Subject:** RE: Ava Ruha v. Mother's Nutritional Center - CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY

Jeffrey,

I have yet to hear back from our client on your proposed terms, and shall follow up with them. I note that the discovery cut-off date is on October 11 (a Sunday so would roll over to Monday the 12<sup>th</sup>). In the interim, will you consent to a further extension of the remaining deadlines in the case by an additional 30 days?

Please advise at your earliest opportunity.

Thanks,

Stephen Vegh

# Exhibit P

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**From:** Stephen Z. Vegh  
**Sent:** Thursday, October 08, 2015 10:39 AM  
**To:** Paul S. Marks  
**Cc:** Jeffrey Berkowitz (JBerkowitz@bcrlegal.com); Tara L. Hamilton  
**Subject:** RE: Extension

Yes, I think agreement with prior counsel was no extension on expert disclosures. I believe automated extension request was done this way because if carve out different dates, it takes Trademark Office longer to process request.

---

**From:** Paul S. Marks [<mailto:PMarks@neufeldmarks.com>]  
**Sent:** Wednesday, October 07, 2015 7:17 PM  
**To:** Stephen Z. Vegh  
**Subject:** RE: Extension

Apologies for misspelling your name with a “V” . . . .

---

**From:** Paul S. Marks  
**Sent:** Wednesday, October 07, 2015 7:14 PM  
**To:** Stephen Z. Vegh ([svegh@stetinalaw.com](mailto:svegh@stetinalaw.com))  
**Cc:** [jberkowitz@bcrlegal.com](mailto:jberkowitz@bcrlegal.com)  
**Subject:** Extension

Steven – this is NOT what I agreed to (PDF below). I hope and assume that there was a typographical error, or some type of misunderstanding between you and your staff, that resulted in a filing that purports to extend the already-passed expert disclosure date – something I did not agree to.

Please do one of two things: (1) fix the filing with the TTAB, so that it accurately reflects my agreement (I will re-send the email containing my agreement); or (2) confirm by return email that your client will NOT be designating any experts in this matter.

Thank you.

<< File: 213647\_1.pdf >>

***WE HAVE MOVED!***

***AS OF DECEMBER 15, 2014, OUR NEW ADDRESS IS:***

***NEUFELD MARKS  
315 WEST NINTH STREET, SUITE 501  
LOS ANGELES, CALIFORNIA 90015***

Paul S. Marks, Esq.

Neufeld Marks  
315 West 9th Street, Suite 501  
Los Angeles, California 90015

213 625-2625 (phone)

213 625-2650 (fax)

[pmarks@neufeldmarks.com](mailto:pmarks@neufeldmarks.com)

[www.neufeldmarks.com](http://www.neufeldmarks.com)

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# Exhibit Q

## Tara L. Hamilton

---

**From:** Tara L. Hamilton  
**Sent:** Thursday, November 05, 2015 8:53 AM  
**To:** Stephen Z. Vegh; Paul S. Marks  
**Cc:** Jeffrey Berkowitz (JBerkowitz@bcrlegal.com)  
**Subject:** RE: Extension

Mr. Marks,

We are still awaiting an answer from our client regarding your recent settlement proposals. Due to the discovery cutoff deadline approaching next week, will you be agreeable to another 30 or 60 day extension of time? If so we will file with the Board and this will also confirm that while it is filed online, the expert disclosure deadline is considered closed. Thank you so much.

Tara Hamilton  
Litigation Paralegal  
Stetina Brunda Garred & Brucker  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
Tel: (949) 855-1246  
Fax: (949) 855-6371  
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**From:** Stephen Z. Vegh  
**Sent:** Thursday, October 08, 2015 10:39 AM  
**To:** Paul S. Marks  
**Cc:** Jeffrey Berkowitz ([JBerkowitz@bcrlegal.com](mailto:JBerkowitz@bcrlegal.com)); Tara L. Hamilton  
**Subject:** RE: Extension

Yes, I think agreement with prior counsel was no extension on expert disclosures. I believe automated extension request was done this way because if carve out different dates, it takes Trademark Office longer to process request.

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# Exhibit R



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**From:** Stephen Z. Vegh  
**Sent:** Friday, November 06, 2015 1:29 PM  
**To:** Paul S. Marks; Jeffrey Berkowitz (JBerkowitz@bcrlegal.com)  
**Cc:** Tara L. Hamilton  
**Subject:** RE: Extension

Counsel,

Without disclosing attorney-client communications, additional individuals must consider the terms of your further settlement proposal before a response can be provided. Please confirm that you will consent to the extension requested yesterday by Ms. Hamilton, at your earliest opportunity.

If you'd like to discuss, please feel free to give me a call.

Thank you,

Stephen Vegh

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**From:** Tara L. Hamilton  
**Sent:** Thursday, November 05, 2015 8:55 AM  
**To:** Stephen Z. Vegh; Paul S. Marks  
**Cc:** Jeffrey Berkowitz ([JBerkowitz@bcrlegal.com](mailto:JBerkowitz@bcrlegal.com))  
**Subject:** RE: Extension

Mr. Marks,

We are still awaiting an answer from our client regarding your recent settlement proposals. Due to the discovery cutoff deadline approaching next week, will you be agreeable to another 30 or 60 day extension of time? If so we will file with the Board and this will also confirm that while it is filed online, the expert disclosure deadline is considered closed. Thank you so much.

Tara Hamilton  
Litigation Paralegal  
Stetina Brunda Garred & Brucker  
75 Enterprise, Suite 250  
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**From:** Stephen Z. Vegh  
**Sent:** Thursday, October 08, 2015 10:39 AM